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IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1968

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No. ~~1029~~ ~~53~~ 15

SARA BAIRD, *Petitioner*,

*v.*

STATE BAR OF ARIZONA, *Respondent*.

BRIEF IN OPPOSITION TO PETITION FOR A  
WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF ARIZONA

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No. 1079

SARA BAIRD, *Petitioner*,

v.

STATE BAR OF ARIZONA, *Respondent*.

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

### Jurisdiction

The State Bar of Arizona is not a proper party to this Petition. Its only function is to recommend rules governing admission of applicants to the Arizona State Bar and to recommend to the Supreme Court the names of members of the State Bar for appointment to the Committee on Examinations and Admissions, as vacancies occur. The Supreme Court names the members of the Committee and itself promulgates the rules which guide the Committee in its functioning as an arm of the Court. See Rule 28(a), Appendix A.

"The State Bar of Arizona is not an appropriate party to the suit because it cannot promulgate or change the rules governing admission to practice in Arizona. Its Board of Governors can suggest rules to

the Arizona Supreme Court, and can enforce them, but only with the approval of the Arizona Supreme Court. Arizona Revised Statutes Sec. 32-237, sub-sec. 2(1956) Rule 28 of the Rules of the Supreme Court of Arizona, 17 A.R.S. governs the admission of attorneys to practice."

*H. Samuel Hackin v. Lorna E. Lockwood, Jesse A. Udall, Charles C. Bernstein, Fred C. Struckmeyer, Jr., Ernest W. McFarland, Justices of the Supreme Court and the State Bar of Arizona, 361 F.2d 499 (1966) C.A. 9*

### **Question Presented**

May an applicant for a license to practice law from the Arizona Supreme Court refuse to answer a question as to whether or not such applicant is a member of any organization which advocates overthrow of the United States Government by force and violence when it is made plain to such applicant by the Supreme Court Committee on Examinations and Admissions that:

- (a) an affirmative answer will not result in rejection of the application;
- (b) It is only if upon further inquiry the Committee concludes that the applicant in fact adheres to and supports the views of such an organization and would expect to actively support such views that the recommendation of the Committee would be adverse; upon the ground that her First and Fifth Amendment privileges are thereby infringed?

### **Constitutional Provisions, Statutes and Rules Involved**

In addition to the constitutional provisions, statutes and rules referred to in Petitioner's Petition, Rules 28(a),

28(c)II, 28(c)V (in part), and Exhibit A, the Questionnaire are involved. These are found in the 1969 Cumulative Pocket Part to Volume 17, Arizona Revised Statutes, Annotated, and are printed as Appendix A hereto.

### **Statement of the Case**

Since Petitioner admits to a full answer to Question 25, i.e., a full listing of all organizations with which Petitioner has been associated since age 16, we may lay aside any consideration of the requirement of Rule 27 that Petitioner tell the Committee whether or not she has ever been a member of the Communist Party.

The question then is whether or not it is permissible for a Supreme Court character committee, charged with the responsibility of investigating the character of applicants for admission to practice law, to require an answer from an applicant as to whether or not such applicant actively adheres to and expects to support and advance a belief that the government of the United States should be overthrown by force and violence.

Apparently Petitioner would reason to the conclusion that if the question asked would permit a plea of the Fifth Amendment in a judicial proceeding the area of impermissible interrogation is broached by such question.

At page 9 of Petitioner's Petition it is argued

"The lawyer who claims self-incrimination may refuse to answer a question on that ground and will nonetheless remain a member of the bar. The applicant who declines to answer a question because of both First Amendment and Fifth Amendment rights will be excluded from the bar."

Logically, therefore, if this reasoning be sound, an applicant for admission to practice law may also refuse to

answer inquiries as to previous brushes with the law including embezzlement, grand larceny, fraud and like criminal activities.

As to the claim that the refusal of Petitioner to answer question 27 did not obstruct the work of the Committee, the answer is simply that the record is clear that it did.

Under Rule 28 the Supreme Court of Arizona specifically required that this question be put to each applicant. The Committee could not complete its processing of the application unless this question be answered.

All of which brings us to the real question posed by applicant, which is:

May an applicant for a license to practice as an attorney at law be required to disclose if he or she believes that the government of the United States should be overthrown by force and violence and, if so admitted, would espouse, champion and support such a belief?

The answer seems self-evident.

If the responsibilities and privileges of the office of attorney at law, as an arm of the Court, are equated in the view of Petitioner, to the responsibilities of a seaman, a defense worker, a teacher, a post office clerk and a federal health insurance claimant, then, should this Court share that view, perhaps the argument of Petitioner is sound.

### **Conclusion**

The Petition should be denied.

Respectfully submitted,  
**MARK WILMER**

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Counsel for Respondent

## Appendix A

### RULES OF THE SUPREME COURT

#### V. Admission and Discipline of Attorneys

##### Rule 28. Examination and Admission

**Rule 28(a) Committee on examinations and admissions; powers and duties.** The examination and admission of applicants for membership in the State Bar of Arizona shall conform to this Rule. For such purpose, a committee on examinations and admissions consisting of five active members of the state bar shall be appointed by this court upon the recommendation of the board of governors of the state bar which shall recommend at least three members of the state bar for each appointment to be made. The committee shall examine applicants and recommend to this court for admission to practice applicants who are found by the committee to have the necessary qualifications and to fulfill the requirements prescribed by the rules of the board of governors as approved by this court respecting examinations and admissions heretofore adopted and made effective May 25, 1948, and as amended effective February 1, 1954, and such other rules as hereafter may be adopted. The court will then consider the recommendations and either grant or deny admission. As amended effective June 19, 1964.

##### **28(c) Rules governing admission of applicants to the state bar of Arizona, as amended.**

## II

Except as hereinafter provided in Rule X any person desiring to be admitted to the practice of law in the State of Arizona must file with the Secretary of the Committee on Examinations and Admissions, hereinafter called

"Committee," at the office of the State Bar of Arizona, a written application in substantially the following form:

**Application for Examination**

To the Committee on Examinations and Admissions of the Supreme Court of Arizona:

I, \_\_\_\_\_, hereby apply for permission to take the examination to be given in the month of \_\_\_\_\_ (February or July) of the year 19\_\_\_\_\_.

I am \_\_\_\_\_ years of age.

I am, or at the time of the examination for which this application is made, I will be an actual and bona fide resident of the State of Arizona, and have been or will have been such resident since the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, residing at \_\_\_\_\_ (alone) (with my family consisting of \_\_\_\_\_). (In case the application is based upon the residence attendance at the College of Law of the University of Arizona or the two semesters provided by subdivision 2 of Rule IV, two semesters provided by subdivision 2 of Rule IV, there should be inserted in lieu of the foregoing statement of bona fide residence the facts showing the residence attendance at the College of Law of the University of Arizona or of the College of Law of Arizona State University required by Rule IV. In such cases the applicant's address at the University of Arizona or Arizona State University and his permanent home address should be given.)

I graduated or will graduate from the \_\_\_\_\_ Law School, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.  
 I am mentally and physically able to engage in active and continuous practice of the law. (If not, state extent of disability.) \_\_\_\_\_.

The following are the names and addresses of persons by whom the foregoing statements may be verified: \_\_\_\_\_.

I have never been charged with or convicted of any

felony or of any misdemeanor involving moral turpitude, except the following: \_\_\_\_\_.

My good moral character will be vouched for by \_\_\_\_\_ whose occupation is \_\_\_\_\_, and whose address is \_\_\_\_\_; by \_\_\_\_\_ whose occupation is \_\_\_\_\_, and whose address is \_\_\_\_\_; and by \_\_\_\_\_, whose occupation is \_\_\_\_\_, and whose address is \_\_\_\_\_.

As a part of this application I (file herewith) (have heretofore filed) my Applicant's Questionnaire and Affidavit.

I agree that I will on the day the examination begins file a further statement on the form to be supplied by the Committee at the time of the notification of the time and place of the giving of the examination of any material changes in or additions to the answers to the Applicant's Questionnaire and Affidavit which have occurred between the date of the filing of said Applicant's Questionnaire and Affidavit and the date of the examination.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.  
\_\_\_\_\_

## V

Before acting upon any application the Committee will require the applicant to file with the Committee applicant's questionnaire and affidavit, which is set forth in Exhibit A hereto attached. This shall be on the printed form which will be furnished by the Committee. The applicant's questionnaire and affidavit must be accompanied by (1) the fingerprints of the applicant taken in an approved manner and certified by a municipal police department, a sheriff's office, or other recognized authority acceptable to the Committee, and (2) a dull finish photograph of the applicant's head, neck and shoulders, not larger than 4 inches by 4 inches nor smaller than 3 inches by 3 inches, taken within six months prior to filing with the Committee.

## EXHIBIT A

### **Instructions to the Applicant**

All statements are to be based on your own knowledge, unless the statement is expressly qualified to show the source of your information. Answer all questions and make your answers as specific as possible. If the space for any answer is insufficient, you may complete your answer on a separate attached sheet. Please have the answers typewritten if possible.

### **Applicant's Questionnaire and Affidavit**

1. State:

(a) Full name.  
Social Security Number:

(b) Have you ever been known by any other name or surname \_\_\_\_\_; if so state all  
Yes or No  
names used and the places and times thereof.  
If married woman, give maiden name.

2. Date of birth \_\_\_\_\_  
Birthplace \_\_\_\_\_ Age \_\_\_\_\_  
3. State every residence you have had since you were  
sixteen years of age:

From To  
City and State Street No. (Mo. & Yr.) (Mo & Yr.)  
Present Address: \_\_\_\_\_

Present Address: \_\_\_\_\_

4. My education was received as follows:

(a) High School \_\_\_\_\_ Name, Location \_\_\_\_\_

Name \_\_\_\_\_  
Dates of attendance: \_\_\_\_\_

Dates of attendance:  
From \_\_\_\_\_ To \_\_\_\_\_

(b) College or University other than law study

Name \_\_\_\_\_

## Location

Dates of attendance:

From \_\_\_\_\_ To \_\_\_\_\_  
(If you did not attend a college, so state)

(c) Law Study:

Law Schools \_\_\_\_\_  
Name, Location

Dates of attendance:

From \_\_\_\_\_ To \_\_\_\_\_

Name Location

Dates of attendance:

From \_\_\_\_\_ To \_\_\_\_\_

Degrees: \_\_\_\_\_ Yes or No What Degrees

Law Office Study:

Name of firm or employer Address

Dates: From \_\_\_\_\_ To \_\_\_\_\_

Name of firm or employer Address

Dates: From \_\_\_\_\_ To \_\_\_\_\_

5. Make a complete statement of your practice of the law since first being admitted to practice in any jurisdiction. Include temporary or part-time work. State as to each employment or period of private practice:

- (1) The periods during which you were employed as an attorney or engaged in private practice, with the dates.
- (2) The exact addresses of the offices or places at which you were so employed or engaged and the complete names and present addresses of all such former employers, partners or associates, if any. (If room number of office is known, this should be given. If you shared office space with other lawyers or business firms, please so state and give their full names and present addresses.)
- (3) The nature and extent of your duties or practice.

(4) The reason for the termination of each employment or period of private practice.

(1) (2) (3) (4)

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6. Make a complete statement of all employments you have had, or business or occupations in which you have been engaged on your own account, since you became sixteen years of age, other than as set forth in question 5. Include temporary or part-time work. State as to each employment, business, or other occupation:

(1) The periods during which you were so employed or engaged with the dates.  
(2) The exact addresses of the offices or places at which you were so employed or engaged and the names and present addresses of all such former employers, partners or associates in business, if any.  
(3) The position held by you.  
(4) The reason for the termination of each employment, business or other occupation.

(1) (2) (3) (4)

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Include complete details regarding any service in the armed forces, i.e., dates of service, rank, serial number, locations, last commanding officer, and your last service address complete. If separated from such service, state nature of such separation and, if other than honorable, specify type thereof and circumstances surrounding your release. Give full particulars as to any complaints or disciplinary proceedings against you.

7. Have you ever held any judicial office?

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Yes or No

If so, state where, when, and offices held, and if terminated the reasons therefor:

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8. (a) Have you ever held a license, other than as an attorney at law, the procurement of which required proof of good character (i. e., certified public accountant, patent attorney, real estate broker, etc.)

Yes or No

As to each license, state the date it was granted, and the name and address of the authority issuing it.

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(b) State every application presented and examination taken by you for a license granted by the state or an official position, the procurement of which required proof of good character. (Specify all examinations whether or not you were successful. Specify every application presented including applications for reinstatement and withdrawn applications and whether or not they were granted.) State as to each application the date, the name and address of the authority to whom it was addressed, and the disposition made of it, with the reasons therefor, and as to each examination the result thereof.

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9. Name all jurisdictions and courts in which you have been admitted to practice law. Give dates of admission to practice.

(a) Jurisdiction (b) Courts (c) Date of Admission

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10. State every application for admission to the bar made by you EXCEPT those covered by your answers to question 9, the disposition made of each such application, and the reason therefor.

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11. Have you registered or taken any other steps looking to taking the examination in any other jurisdiction? \_\_\_\_\_

Yes or No

If so, give dates and full circumstances. \_\_\_\_\_

12. Do you intend to take the examination or apply for admission in any other jurisdiction between the date hereof and your admission to the Bar of Arizona, if you qualify? \_\_\_\_\_

Yes or No

If so, give dates and full circumstances. \_\_\_\_\_

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13. Have you been entitled to practice in each of the locations specified under question 9 and before each court continuously from the date you first became so entitled until the date hereof? \_\_\_\_\_

Yes or No

If not, state the dates during which you have not been so entitled, the nature of the disqualification, the facts, and the name and address of the person or body in possession of the record thereof.

14. Have you been disbarred, suspended from practice, reprimanded, censured or otherwise disciplined or disqualified as an attorney or member of any profession or organization, or holder of any office, public or private; or have any complaints or charges, formal or informal, ever been made or filed or proceedings instituted against you? \_\_\_\_\_

Yes or No

If so, state the dates, the facts, the disposition of the matter, and the name and address of the authority in possession of the record thereof.

15. If you have been previously admitted to the bar, state the exact names and addresses of courts before which your former practice of law was chiefly conducted.

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Name

Location

16. Have you ever held a bonded position? \_\_\_\_\_  
**Yes or No**

If so, specify nature of position, dates, amount of bond and whether or not any one ever sought to recover upon your bond or to cancel the same. State facts fully, including the name and address of the bonding company, if any.

17. Were you ever dropped, suspended, or expelled from school or college? \_\_\_\_\_  
**Yes or No** -

If so, state facts fully.

18. Were you at any time in the course of your schooling or elsewhere accused of cheating or plagiarism?

**Yes or No**

Give details.

19. (a) Have you ever been a party to or had or claimed any interest in any civil proceeding?

**Yes or No**

(b) Have you ever been charged with, arrested, or questioned regarding, the violation of any law?

**Yes or No**

(c) Have you ever been charged with fraud, formally or informally, in any legal proceeding, civil or criminal, or in bankruptcy?

**Yes or No**

(d) Have you ever been declared a ward of any court?

**Yes or No**

(e) Have you ever been adjudicated an incompetent person, an insane person or a lunatic by any court?

**Yes or No**

(f) Have you ever been adjudicated a bankrupt, or has a petition in bankruptcy been filed at any time by you or against you, either alone or in association with others? Have you ever been brought in as a

party to any proceedings in a bankruptcy court; or have you ever been sued or threatened with suit by the receiver, trustee, or other authority of any bankrupt estate, for unlawful preference, conspiracy to conceal assets, or any other fraud or offense, whether punishable by criminal law or not? \_\_\_\_\_

Yes or No

Give full details for (a), (b), (c), (d), (e), and (f), including dates, exact name and address of the court if any, case numbers, references to the court records if any, the facts, the disposition of the matter; if no court records are available, give to the best of your ability the names and addresses of all persons involved, including counsel. (Include all such incidents no matter how minor the infraction or whether guilty or not.)

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20. Are there any unsatisfied judgments against you?

Yes or No

If so, list them, giving names and addresses of creditors, amounts, dates and nature of judgment, and reasons for non-payment.

21. (a) State whether or not you are married. \_\_\_\_\_

Yes or No

If so, give date of each marriage and full name of spouse prior to that marriage.

(b) State whether or not you have ever been divorced. \_\_\_\_\_

Yes or No

If so, the name of the spouse from whom divorced, the exact name and address of the court, the case number, the date, the ground of divorce, and by whom suit was brought.

(c) If a divorce suit is pending or a marriage has

been annulled, give particulars similar to those requested under (b).

22. State names and addresses of three persons in each locality where you practiced law with whom you are personally acquainted, preferably other than those referred to in your answer to question 5. (If you have not practiced previously, give the same information for each locality in which you have lived.)

Name	Address	Occupation	How long has Known you
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23. Give the names and addresses of three attorneys and two clients who know you. These should be other than those supporting your application or named in questions 5 and 22. (If you have not practiced previously, give the names of law school professors, etc.)

Name	Address	Occupation
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24. Give the name and location of each bar association of which you are or have ever been a member.

25. List all organizations, associations and club (other than Bar associations) of which you are or have been a member since attaining the age of 16 years.

26. Is there any other incident in your career, not hereinbefore referred to having a bearing upon your character or fitness for admission to the Bar?

Yes or No

If so, give full details.

27. Are you now or have you ever been a member of the Communist Party or any organization that advocates overthrow of the United States Government by force or violence?

I, \_\_\_\_\_, hereby apply for a character

report in connection with my application for admission to practice law in the State of Arizona. I agree to give any further information which may be required in connection with my past record, and consent to having this investigation made and such information as may be received reported to the admitting authority.

I agree that I will not receive a copy of the report, or any information received in connection with this application, and I expressly waive any and all rights I might have or claim to such report, any copy thereof, or to know the contents thereof.

---

Signature  
STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } ss.

\_\_\_\_\_, being duly sworn, says: I have read the foregoing questions and have answered them fully and frankly. The answers are complete and are true of my own knowledge.

Signature of Applicant  
Subscribed and sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, A.D. 19\_\_\_\_\_.

---

Notary Public

Adopted April 1, 1967.

